

The importer has protested, claiming that they were dutiable as pins, under paragraph 170 of said act, which is as follows:

"Pins metallic, including pins with glass heads, hairpins, safety pins, and hat, bonnet, shawl and belt pins, not commercially known as jewelry, 25 per centum ad valorem."

The only material difference between this paragraph and paragraph 209 of the act of 1883 is in the change of location of the word "including." I do not think that congress thereby intended to change the effect of the word "metallic" as qualifying the whole paragraph. The decision of the board of general appraisers affirming the action of the collector is affirmed.

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UNITED STATES v. E. L. GOODSSELL CO.

(Circuit Court, S. D. New York. February 16, 1897.)

CUSTOMS DUTIES—IMPORTS UNDER PRIOR LAWS.

Merchandise, imported before the tariff act of 1894 went into effect, but which remained in the custody of the customs officers, and was not delivered to the importer until after that act went into effect, is subject to the rates of duty imposed by that act.

This was an application by the collector of the port of New York for a review of the decision of the board of general appraisers, reversing the decision of the collector as to the rate of duty on certain lemons imported by the E. L. Goodsell Company. The permit to land and deliver the goods was not indorsed by the examiner until August 29, 1894. The enacting clause of the tariff act of 1894 imposes duties on articles "imported from foreign countries or withdrawn for consumption" after its passage. The treasury circular of September 20, 1894, says that, "if it shall appear that the goods are in customs custody on the 28th ult., and that no permit had been presented for the delivery thereof, the same would fall under the new act." The entries of the goods were made on August 23 and 25, 1894, and the collector assessed duty under the tariff act of 1890, which was in force at that date.

Henry C. Platt, Asst. U. S. Atty.

W. W. Smith, for importer.

TOWNSEND, District Judge (orally). On August 23, 1894, the merchandise in question arrived at the port of New York, and was entered for duty, and a written permit to land, designating it for examination on the wharf, was issued. It was examined August 29, 1894, and the entry was liquidated September 8, 1894. The importer protested, claiming that it was dutiable under the provisions of the tariff act of 1894. The board of general appraisers sustained the protest, and the United States appeals.

The tariff act of 1894 went into effect on August 28, 1894. On that day the merchandise was in the custody of the customs officers. The contemporaneous construction of said act by the treasury department followed by said board herein seems to be in harmony with

the decision of the supreme court of the United States in *Hartranft v. Oliver*, 125 U. S. 525, 8 Sup. Ct. 958, construing similar provisions in the tariff act of March 3, 1883. I am not sufficiently familiar with the term "withdrawn for consumption" to satisfactorily determine what scope it would be given in said act. If it is to be strictly construed as applied to merchandise entered in a government warehouse, and afterwards withdrawn therefrom, the merchandise in question was not so withdrawn, and the act of 1894 does not apply. But if, as contended by counsel for the importer, it may mean, generally, goods withdrawn from the control of the customs officers, and delivered into the custody of the owner, then I think it must have been the intent of congress to provide that merchandise which, as in this case, did not come under the control of the owner until after August 28, 1894, should pay duty according to the provisions of the act of 1894. In these circumstances the doubt, under the familiar rule, will be resolved in favor of the importer. The decision of the board of general appraisers is affirmed.

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WIEBUSCH et al. v. UNITED STATES.

(Circuit Court, S. D. New York. February 16, 1897.)

CUSTOMS DUTIES—FLAX MEASURING TAPES.

Measuring tapes of flax, in cases of leather and metal, flax being the component material of chief value, are dutiable under the tariff act of 1883 as manufactures of flax or of which flax is the component material of chief value, and are subject to the duty of 40 per cent ad valorem imposed by paragraph 336 of the act, and not to the duty of 35 per cent. imposed by paragraph 334.

This was an application by Wiebusch & Hilger for a review of the decision of the board of general appraisers as to the assessment of duties on certain merchandise imported by them, consisting of linen measuring tapes in cases of leather and brass, flax being the component material of chief value in the completed articles.

Paragraph 334 of the tariff act of 1883 imposes a duty of 35 per cent. ad valorem on "brown and bleached linens, \* \* \* or other manufactures of flax, jute or hemp, or of which flax, jute or hemp shall be the component material of chief value, not specially enumerated or provided for." Paragraph 336 imposes a duty of 40 per cent. ad valorem on "flax or linen thread, \* \* \* and all manufactures of flax or of which flax shall be the component material of chief value, not specially enumerated or provided for."

Comstock & Brown, for importers.

J. T. Van Rensselaer, Asst. U. S. Atty.

TOWNSEND, District Judge (orally). The articles in question are measuring tapes. The importer contends that they should be classified for duty under paragraph 334 of the tariff act of 1883; the United States contends that paragraph 336 should be applied. Each of these paragraphs provides for "manufactures of flax, or of which flax shall be the component material of chief value, not specifically

enumerated or provided for." It is conceded that these articles fall within said classification. There would be considerable force to the argument on behalf of the importer claiming the application of the doctrine of *ejusdem generis*, were it not for the provisions in said act that, where two or more rates of duty should be applicable, the articles should be classified under the highest of said rates. These provisions were construed and applied to similar articles by Judge Lacombe in *Dieckerhoff v. Robertson*, 40 Fed. 568. The highest rate of duty was imposed therein, and it will accordingly be imposed in this case. Let a judgment be entered accordingly.

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### RUSSELL v. UNITED STATES.

(Circuit Court, S. D. New York. February 16, 1897.)

#### CUSTOMS DUTIES—IMPORTATIONS FOR TEMPORARY USE—FAILURE TO RE-EXPORT—RATE OF DUTY.

Articles admitted free of duty for temporary use, under paragraph 596 of the tariff act of 1894, do not become subject to any duty until the importer, within or at the end of the period allowed by law, has elected not to export them; and are then subject to the rate of duty in force at such time, and not to that in force when they were imported.

Comstock & Brown, for importer.  
Henry C. Platt, Asst. U. S. Atty.

TOWNSEND, District Judge (orally). On October 27, 1894, Miss Lillian Russell imported into the port of New York certain theatrical woolen wearing apparel, which was admitted free of duty for temporary use upon bonds being given in accordance with the provisions of paragraph 596 of the tariff act of August 28, 1894. The entry was liquidated May 3, 1895. The time for exportation was extended for six months. The duties assessed under provisions of paragraph 396 of act of 1890 were paid October 30, 1895, under protest, which protest was lodged with the collector November 1, 1895. The board of general appraisers, affirming the action of the collector, overruled the protest. The importer appeals, claiming that the merchandise did not become subject to duty until after January 1, 1895, by virtue of the provisions of paragraph 297 of the tariff act of 1894, which are as follows: "The reduction of the rates of duty herein provided for manufactures of wool, shall take effect Jan. 1, 1895." I think the importer is correct in this contention. It does not appear what form of bond was exacted by the collector, but upon the assumption that he fulfilled his legal duty it was "for the payment to the United States of such duties as may be imposed upon all such articles as shall not be exported within six months (or one year) after such importation." Section 596 expressly provides that "for temporary use \* \* \* these articles shall be admitted free of duty." During the period of six months, or one year, the importer had her election to determine whether she would or would not export said articles, and, until she exercised such election, the collector, at least in the absence of proof of bad faith, had no au-